Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-408

CITY OF MILWAUKEE, ET AL.,
Petitioners,

vs.

STATE OF ILLINOIS, ET AL.,
Respondents.

STATE OF ILLINOIS' OBJECTION TO THE MOTION OF MID-AMERICA LEGAL FOUNDATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

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Pursuant to Rule 42(3) Respondent State of Illinois objects to the motion of the Mid-America Legal Foundation for leave to file a brief as *amicus curiae*. The State of Illinois objects to the motion and has not consented to the filing of the brief for the following reasons:

1. Mid-America is so closely related to the Petitioner City of Milwaukee, that its nominal role as *amicus curiae* creates a serious potential for misleading the Court.

(a) Mr. Henry L. Pitts, Esquire is a founder and current member of the Board of Directors of Mid-America Legal Foundation. Mr. Pitts also represented the Petitioner City of Milwaukee as one of its counsel before the district court below. This close tie between the Petitioner City of Milwaukee and the Mid-

America Legal Foundation has not been disclosed to this Court.

(b) Also on the Board of Directors of Mid-America Legal Foundation are executives of Armco Steel Company and Interlake, Inc., two major dischargers of industrial pollutants into the nation's waterways. If these industrial dischargers wish to have their views known to the Court on the issues presented by the municipal discharger, the City of Milwaukee, they should openly identify themselves and their interests rather than using the guise of a "non-partisan" legal research foundation.

2. In these circumstances, for Mid-America to come before this Court holding itself out as an independent *amicus* seeking only to assist the Court in correctly resolving this case creates a substantial potential for hiding or misrepresenting the interests which Mid-America Legal Foundation and its sponsors actually seek to advance. Under any circumstances, as an *amicus* which is beholden to substantial outside interests, Mid-America stands on a somewhat less favorable footing than one which is independent of such interests. *Universal Oil Company* v. *Root Refining Company*, 328 U. S. 575, 580-581 (1946). Where, as here, that outside interest is actually a party to the litigation, it is unfair and potentially misleading for the movant for *amicus* status to seek to appear at all.

Finally, it is exceedingly doubtful that Mid-America will present anything to this Court that the Petitioner will not or could not set forth in an entirely satisfactory manner. The issues which Mid-America has raised in its brief—the relationship between the common law and the Federal Water Pollution Control Act, and a purported conflict between the Seventh Circuit's decision and prior decisions of this Court on the issue of the correct standard of proof in this case—have been comprehensively briefed by the Petitioner. The *amicus* brief adds nothing. (See Petition for Certiorari at pp. 17-31, 33-41.)

For the reasons stated above, the State of Illinois objects to the motion of the Mid-America Legal Foundation for leave to file a brief as *amicus curiae*.

Respectfully submitted,

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Dated: September 21, 1979.